# RECENT IMPORTANT DECISIONS.

ACTIONS—MOOT QUESTIONS NOT DECIDED.—Complainant's interest in a lot under a will was sold to satisfy a judgment against him and the defendant became the purchaser at a sheriff's sale. The defendant thereafter agreed to reconvey to the complainant, for a certain sum within two years, which complainant has not offered to pay. *Held* that the court will not decide, in an action to have a trustee appointed and the premises sold, what interest complainant took therein under the will; that being a moot question, as the complainant has no present interest therein. *Lonergan* v. *Goodman et al.*, (1909), — Ill. —, 89 N. E. 349.

The grantor in a trust deed has no right to maintain an action merely to obtain a construction of the deed. That privilege is confined to the trustee or those claiming under the trust and requiring that it be executed. *Levy* v. *Hart*, 54 Barb. 248. An action brought for the mere purpose of obtaining the opinion of the court upon the construction of a will cannot be maintained in cases where no trust is involved. *Collins* v. *Collins*, 19 Ohio St. 468. Where plaintiff files a petition alleging that defendant is in the possession of certain lands which plaintiff claims and that defendant has no title or right to possession, but asks no decree save that the court declare the legal rights of the parties, a demurrer should be sustained. *Southern Ry. Co.* v. *State*, 116 Ga. 276, 42 S. E. 508. An insurance company has no authority to institute a suit for the purpose of obtaining a construction of the obligations of its members, *In re Hurst Home Ins. Co.*, 23 Ky. Law Rep. 940, 64 S. W. 512. Courts will not construe contracts until actual issues have arisen from them. *New Orleans & N. W. Ry. Co.* v. *Linehan Ferry Co.*, 104 La. 53, 28 So. 840. But when the condition of a person, the thing called status, is a matter of public concern, it is a proper object to be dealt with by a direct proceeding in any tribunal having jurisdiction of the res, which would apply to the status of a college regulated by the legislature. *State ex rel. Milwaukee Medical College* v. *Chittenden et al.*, 127 Wis. 468, 107 N. W. 500. Where a party boards a car, tenders a certain fare and on refusing to pay more is ejected, an action by him is not a moot case, which the court will refuse to entertain, though the parties' sole motive was to make a test case. *Adams* v. *Union Ry. Co.*, 21 R. I. 134, 42 Atl. 515, 44 L. R. A. 273.

AUTOMOBILES—DANGEROUS MACHINES—LIABILITY OF OWNERS FOR MISUSE.—Defendant's chauffeur while driving defendant's car on a pleasure trip with his own friends, with defendant's consent, so carelessly and negligently managed the car as to strike a carriage and overturn it, thereby throwing to the ground and severely injuring the plaintiff who was driving the carriage. *Held,* that the evident conception of the legislature in creating the restrictions of the motor vehicle law, was that the automobile is a dangerous machine and that the owner should be subject to the law relating to dangerous

machines and implements, and be liable for the manner in which it is used. *Ingraham* v. *Stockamore et al,* (1909), 118 N. Y. Supp. 399.

One who is running an automobile at the time of an accident is *prima facie* the servant of the owner. *Hiroux* v. *Baum,* (Wis.) 118 N. W. 533. One who places in the hands of another, a dangerous instrument is liable for the natural consequences. *Palm* v. *Ivorson,* 117 Ill. App. 535; *Chaddock* v. *Plummer,* 88 Mich. 225, 50 N. W. 135, 26 Am. S. Rep. 283, 14 L. R. A. 675. But an automobile is not per se dangerous so as to render its owner liable for injuries to one caused by the negligence of a chauffeur acting beyond the scope of his employment. *Jones* v. *Hoge,* 47 Wash. 663, 92 Pac. 433; *Cunningham* v. *Castle,* 127 App. Div. 580, 111 N. Y. Supp. 1057. While the use of a motor vehicle is attended with dangers, it is not a dangerous instrumentality. *Vincent* v. *Crandall & Godley Co.,* 115 N. Y. Supp. 600. There is nothing dangerous in the use of an automobile when managed by a prudent driver. *McIntyre* v. *Orner,* 166 Ind. 57, 76 N. E. 750, 4 L. R. A. (N. S.) 1130. The owner of a motor car is not, as a matter of law, liable for injuries caused by the negligence of a chauffeur when not engaged in his master's business, *Cunningham* v. *Castle,* supra; nor can the owner be held where it appears that the chauffeur was not using the machine in the course of his employment, *Doran* v. *Thomsen,* 74 N. J. L. 445, 66 Atl. 897; *Braverman* v. *Hart,* 105 N. Y. Supp. 107; nor is he liable for injuries resulting from its use, regardless of whether the person in charge was acting under his direction. *Danforth* v. *Fisher,* (N. H.) 71 Atl. 535. When the automobile owner merely permits another to use it, the latter does not thereby become the agent of the former so as to charge the one with the negligence of the other, *Lewis* v. *Amorous,* 3 Ga. App. 50, 59 S. E. 338. The owner is not liable for injuries received in a collision with his automobile while it is being operated by a chauffeur hired by the owner's brother, who had charge of the machine as bailee, *Parsons* v. *Wisner,* 113 N. Y. Supp. 922; and the owner is not liable for the negligent driving of his son merely because of ownership. *Maher* v. *Benedict,* 123 App. Div. 579, 108 N. Y. Supp. 228.

BANKRUPTCY—DEBTS DISCHARGED—FRAUD—ELECTION OF REMEDIES.—Petitioner was induced by the fraudulent representations of brokers to engage them to purchase stock, which they were to retain as security for the unpaid purchase price, but which they in fact converted to their own use. Suit was commenced by the petitioner in a state court, the proceeding involving the brokers' arrest. Bail was given by a surety company, to which the defendants gave a bond of indemnity. On motion in the bankruptcy court to vacate the stay of the petitioner against proceeding to the entry of judgment, the trustee opposed the motion and sought to claim the idemnity for the benefit of the estate. Petitioner then claimed that his demand was one which could not legally be discharged under the Bankruptcy Act July 1, 1898, c. 541, § 17a (2) and (4), 30 Stat. 550, U. S. Comp. St. 1901, p. 3428, as amended by Act February 5, 1903, c. 487, § 5, 32 Stat. 798, U. S. Comp. St. Supp. 1907, p. 1026. *Held,* that the claim was not a "liability for obtaining property under false pretenses, or false representations, or for wilful and malicious injury to the person or property of an-